IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
THOMAS D. WATKINS,	)	**Supreme Court #SC87252**
	)	
Respondent.	)	

INFORMANT'S BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

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ATTORNEYS FOR INFORMANT

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STATEMENT OF JURISDICTION

Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

STATEMENT OF FACTS

Initiation of Disciplinary Case

On October 18, 2004, the Office of Chief Disciplinary Counsel received a letter reporting the possibility of professional misconduct by Respondent Thomas Watkins. The letter writer was a lawyer who was representing Sally Bashor[1] in the dissolution of her marriage to Leroy Bashor. The letter to OCDC explained that when Mrs. Bashor left the Bashor family home in 2004, she took with her two cassette tapes. The tapes, which she turned over to the lawyers representing her in the dissolution, recorded a meeting conducted in Respondent Watkins' office in February of 1991. Present for that meeting were Mr. Watkins, a certified public accountant named Craig Sumner, Leroy Bashor, and one of Leroy's three daughters, Rebecca Whetsell. **App. 8-10**. Because the tapes implicated possible professional misconduct by Mr. Watkins, Sally Bashor's lawyers forwarded the tapes to the Office of Chief Disciplinary Counsel. **App. 8-10**.

Before the 1991 Meeting

Leroy and Loarine Bashor were married fifty-seven years. Together they operated a cattle business for forty years. **App. 9**. Leroy bought and sold the cattle; Loarine did the bookkeeping. **App. 42 (T. 109), 46 (T. 126)**.

Certified Public Accountant Craig Sumner began preparing the Bashors' tax returns in 1972. **App. 42 (T. 109)**. In what was probably early 1990, Mr. Sumner and

[1] Sally Bashor married Leroy Bashor in 1992. Leroy was previously married to Loarine Bashor for fifty-seven years, until Loarine's death on January 31, 1991. **App. 9**.

the Bashors discussed the advisability of financial and estate planning. **App. 42 (T. 110)**. Mr. Bashor chose a lawyer named Roger Combs to prepare an estate plan for the Bashors. **App. 46 (T. 125)**. Mr. Combs drafted the following documents to implement the estate plan for the Bashors: revocable inter vivos trusts, pour over wills, and articles of incorporation for the Bashors' cattle business. **App. 42 (T. 111-112)**. The business was incorporated under Missouri statutes in July of 1990.[2] **App. 42 (T. 111), 44 (T. 117)**. The trusts and wills were executed in late December of 1990. **App. 250-278**. The estate plan prepared by Mr. Combs anticipated transfer of ownership of the Bashor cattle to the corporation after January 1, 1991, and that stock in the corporation would then issue to Mr. and Mrs. Bashor. The Bashors would then fund their trusts with the stock. **App. 42-43 (T. 111-113), 44 (T. 117)**. The estate plan was designed to take full advantage of both the husband and wife's available tax credits by splitting their estates into two trusts. **App. 23 (T. 36)**.

On December 30, 1990, Mr. Combs advised Mr. Sumner that he had been elected to a judicial post and would be unable to work on the Bashor estate plan after January 1, 1991. **App. 42 (T. 111), 46 (T. 127)**. All that was left to do after January 1 was to issue

[2] Bashor Cattle Company could not be fully capitalized until after January 1, 1991, which was when the corporation could obtain a license to buy and sell cattle. **App. 44 (T. 118), 46 (T. 126)**. Likewise, the corporation could not issue stock until then, which was when ownership of the Bashor cattle could be transferred to the corporation, thereby creating consideration for the stock. **App. 46 (T. 127)**.

stock in Bashor Cattle Company to Leroy and Loarine Bashor, with each getting a 50% share, and then for each of them to transfer his or her stock to their respective trusts. **App. 22 (T. 30), 43 (T. 113), 46 (T. 127)**. Mr. Combs advised Mr. Sumner that the Bashors should hire another attorney to complete this legal task. **App. 46 (T. 116-117)**.

The Bashor Cattle Company was capitalized in January of 1991 when the cattle inventory was transferred to the corporation. **App. 44 (T. 118-119)**. Loarine Bashor died on January 31, 1991, before stock in Bashor Cattle Company was issued. **App. 43-44 (T. 116-117)**.

Mr. Sumner contacted Respondent Watkins after Loarine's death for assistance in completing the estate plan. **App. 22 (T. 29), 44 (T. 119)**. Mr. Sumner had worked with Mr. Watkins previously on several estate plans. Mr. Sumner was also a client of Mr. Watkins' St. Joseph law firm, Watkins, Boulware, Lucas & Miner. **App. 21 (T. 28), 22 (T. 30), 41 (T. 108)**. Mr. Watkins was licensed in 1971. **App. 21 (T. 27)**. He had many years of practice experience in the areas of estate planning and business law. **App. 31 (T. 65)**.

The cassette tape recordings Sally Bashor turned over to her lawyers in 2004 recorded the 1991 meeting conducted for the purpose of completing the estate plan. The meeting was recorded for the benefit of the two Bashor daughters who could not be present. **App. 9-10**. Mr. Watkins was aware that the meeting was being recorded. **App. 23 (T. 33-34)**.

At the time of Loarine's death, federal tax law provided for a $600,000.00 lifetime unified credit, meaning there would be no federal estate tax owing on Loarine's estate so

long as it was less than $600,000.00. **App. 42 (T. 110-111), 43 (T. 115)**. Loarine Bashor's estate was less than $600,000.00. **App. 244**. Even if it had been more than $600,000.00, Loarine's estate would not have been taxed "under any circumstances," a fact that Mr. Watkins knew before the meeting. **App. 24 (T. 37, 39)**. According to Mr. Watkins, the estate plan already set up by Mr. Combs "created a situation where no tax was paid under any set of circumstances at Loarine Bashor's death." **App. 24 (T. 37-39)**. Mr. Watkins and Mr. Sumner probably did not even discuss tax issues prior to the meeting with Leroy Bashor and his daughter, because they both knew there would be no estate tax consequences for Loarine regardless. **App. 26 (T. 45-46)**.

The circumstance that stock in Bashor Cattle Company had not issued prior to Loarine's death had no effect on her potential estate tax liability. **App. 25 (T. 41)**. All that Mr. Watkins needed to do was issue the Bashor Cattle Company stock and get Loarine's shares transferred into her trust. **App. 22 (T. 30), 23 (T. 34), 45 (T. 123)**. Loarine's equitable interest could have been "run through probate" to put it in the trust. **App. 25 (T. 41-42)**.

The Meeting

Mr. Watkins prefaced the recorded meeting by telling those present that "A lot of this is driven by the idea of saving federal estate taxes. . . . So the focus that I've had on this is to try to help you find a way to save federal estate taxes, both at Lorraine's [sp] death and then when you pass away Leroy." **App. 63**. Mr. Watkins described how estate planning could save approximately $240,000.00 in taxes. **App. 64**.

Mr. Watkins advised those present at the meeting that because not all the paperwork was completed prior to Loarine's death, it was necessary to "go back and reconstruct some of what happened." **App. 64**. To that end, he advised it would be necessary to "go back and . . . throw out all the old minutes." **App. 65**.

To replace the "old minutes," Mr. Watkins had drafted and produced for his clients' signatures a new set of backdated corporate documents, including stock certificates and corporate minutes. Mr. Watkins had prepared documents by which it would appear that an initial stock offering of 25 shares had been issued to Leroy the preceding July. **App. 66, 228**. Mr. Watkins had also prepared false minutes reflecting that the balance of stock in the company issued to Leroy the following January 1. **App. 227, 229**. Then, according to Mr. Watkins, "we had Leroy make a gift to Lorraine's [sp] trust prior to her death." **App. 66**. Mr. Watkins told his clients that since Loarine had been the corporation's secretary, Mr. Watkins had drawn up a set of minutes reflecting that Loarine resigned as secretary before her death and had been replaced by daughter Rebecca Whetsell. **App. 66-67, 227**. In all, Mr. Watkins created documents falsely reflecting an assignment in July of 1990 by the incorporaters of 100% of their interest in the company to Leroy, a designation of corporate directors dated July 2, 1990, a waiver regarding the company's purported first meeting, minutes for nonexistent corporate meetings supposedly held on July 2, 1990, and December 27, 1990, and stock certificates. **App. 221-227**. Mr. Watkins intended for the postdated and forged documents to become a part of the official minute book for Bashor Cattle Company. **App. 28-29 (T. 56-57)**.

Because they needed the deceased Loarine's signature on some of the newly created and backdated documents, Mr. Watkins asked if there was "anybody around that can sign Lorraine's [sp] signature? Can you forge her signature close enough?" **App. 68**. Mr. Watkins told Mr. Bashor and his daughter that "Craig [Mr. Sumner] is not going to hear any of this and neither am I, but you're going to sign her name on some minutes. How does that sound?" **App. 68**. Respondent Watkins then assured everyone that "it'll never get questioned, even. It's – these are absolutely standard set of – they're just dead, plain vanilla. Everybody – any IRS agent is going to look at this and just say it's just, yep, just what he expects to find. And it'll have the right signatures and everything on it." **App. 68-69**. Mr. Watkins reiterated that "all I'm doing is throwing out the stuff that Roger [Combs] did because it doesn't work anymore since it wasn't completed, and start it over again in terms of documenting the transactions." **App. 69**. Later in the meeting, Mr. Watkins announced it was time to "get to signing some of this stuff." **App. 94**. Leroy Bashor signed his deceased wife's name, with Mr. Watkins' advice as to how to slant the letters, to the documents. **App. 45 (T. 122), 95, 110**.

Mr. Sumner, the accountant, went into the meeting thinking all Mr. Watkins was going to do was create stock certificates and get them put into the trusts. **App. 44 (T. 120)**. He should have interrupted Mr. Watkins to correct the impression Mr. Watkins was giving that there could be tax consequences for Loarine's estate, but he did not. **App. 45 (T. 124)**. Fifty percent of the stock, which equitably belonged to Loarine, should have been issued to Loarine, then transferred into her trust via her will. **App. 25 (T. 41-42), 45-46 (T. 124-125)**. Instead, the fact that no tax consequences existed for

Loarine's estate, and the possibility of using the already properly executed trust and will to put Loarine's assets into her trust, was not even discussed. **App. 25 (T. 42)**.

It was Mr. Watkins' idea to create the false corporate minutes and to have someone sign Loarine's name to the backdated documents. **App. 47 (T. 130-131)**. Mr. Sumner knew that Loarine had not resigned her corporate position as secretary before her death. **App. 49 (T. 137)**. Mr. Sumner knew that what was happening was wrong, but he figured it was all going to come out the same in the end without harm to anyone. **App. 45 (T. 122-123), 49 (T. 140)**. Instead of using the properly executed, legitimate documents and going through probate to get the assets into Loarine's trust, Mr. Watkins created and backdated documents so the assets would all go to Leroy, with Leroy then transferring Loarine's share into her trust. **App. 30 (T. 61), 45 (T. 124)**. There were no tax consequences to doing it either way. **App. 46 (T. 125)**.

Mr. Watkins intended for the backdated documents to become the official records of Bashor Cattle Company. **App. 28-29 (T. 56-57)**. He realized that the company's records are open to inspection. **App. 29 (T. 58)**. As a lawyer who practiced corporate law for many years, he also understood the purpose of the statutory framework underlying corporate minute books and annual reports. **App. 31 (T. 65-66)**.

Respondent's Explanation

Creating and backdating documents, and asking his client to forge the client's deceased wife's name to them, was wrong. Mr. Watkins knew it was wrong when he did it, or he would not have made the remark about "not hearing what was going on" at the meeting. **App. 27 (T. 51)**. Mr. Watkins has no explanation for why he asked his client to

forge a signature to backdated documents created after the fact by Mr. Watkins other than that it was "dumb," "poor lawyering," and showed "poor judgment." **App. 27 (T. 51), 28 (T. 53), 53 (T. 153)**. He chose a "really stupid way" to put the stock into Loarine's trust. **App. 28 (T. 53)**. According to Mr. Watkins, the intent was to keep the matter out of probate. **App. 25 (T. 43-44)**. The probate process would take time and some expense. **App. 25 (T. 43-44)**. The correct way to have handled the case was to run Loarine's equitable interest in the family business through a probate proceeding and allow her will to put it in her trust. **App. 25 (T. 41-42), 30 (T. 64)**.

Mr. Watkins testified at the hearing that he does not know what he was thinking when he kept talking at the meeting about tax savings, because tax was not an issue. **App. 23 (T. 33, 35-36), 24 (T. 39)**. His testimony provides no explanation for why his talk focused on estate taxes, aside from the circumstance that it is part of his usual spiel to estate clients, because the issue at that point was getting the stock issued and put into Loarine's trust, not estate taxes. **App. 23-25 (T. 34-42)**. Mr. Watkins does not know the answer to why he would suggest to his clients that taxation of both Loarine's and potentially Leroy's future estate was at risk. **App. 23 (T. 35-36)**. What he said during the meeting makes no sense to him looking back on it today. **App. 24 (T. 40), 26 (T. 47-48), 29 (T. 60)**. He had no substance abuse issues or family or emotional issues going on at that time. **App. 24 (T. 39-40)**.

Mr. Watkins is "absolutely sure" that he knew before the 1991 meeting that Mrs. Bashor's estate was a "no tax estate." **App. 28 (T. 53)**. In Respondent's experience, the IRS has never audited a "no tax" estate. **App. 27-28 (T. 52-53)**. Mr. Watkins has no

explanation for the comments he made at the meeting about the IRS never being able to figure it out. **App. 27-28 (T. 52-53)**.

After the Meeting

Mr. Watkins' firm continued over the next several years to represent Mr. Bashor for the limited purpose of assisting him to make annual gifts to his children in order to reduce his estate. **App. 29 (T. 57)**. Mr. Watkins never gave another thought to the Bashor documents or the meeting until he was notified in 2004 that the tapes had surfaced in the course of the Bashors' divorce. **App. 35 (T. 82-83)**.

After the story broke in the media, Respondent Watkins resigned from his position as managing director of the St. Joseph office of Shughart, Thomson & Kilroy. **App. 51-52 (T. 148-149)**. He thereafter worked in a nonlegal position for four months at a hospital in St. Joseph, then started a solo law practice. **App. 52 (T. 149-150)**. The story, including portions of the transcript from the meeting, appeared in several west and northwest Missouri newspapers and on local television news. **App. 53 (T. 154-155), 245-249**.

Disciplinary Case

A three count information against Respondent was filed in June of 2005. The information charged Respondent with violating Rule 4-1.2(d) (lawyer shall not counsel or assist a client to engage in conduct the lawyer knows is criminal or fraudulent), Rule 4-8.4(c) (engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), and Rule 4-8.4(d) (engage in conduct prejudicial to the administration of justice). **App. 2-7**. Respondent answered the information. A disciplinary hearing panel was appointed in

July of 2005. Informant and Respondent entered into a joint stipulation of facts, which is included in the Appendix to this brief. **App. 8-13**. Respondent admitted in the joint stipulation that his conduct violated Rule 4-8.4(c). **App. 13**.

Hearing was conducted before the panel on August 29, 2005. The panel issued its decision on September 13, 2005. The panel concluded Respondent Watkins violated Rule 4-8.4(c). It recommended that Respondent Watkins' license be suspended for one year, and that the suspension be stayed. The panel further recommended that Respondent be placed on probation for two years under conditions enumerated in the decision. **App. 290-292**. Informant did not concur in the panel's decision, so the record was filed in this Court pursuant to Rule 5.19(d).

Mr. Watkins has no disciplinary history.

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE VIOLATED RULES 4-8.4(c)(d) IN THAT HE ENGAGED IN DISHONEST AND DECEITFUL CONDUCT THAT WAS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE BY PREPARING CORPORATE DOCUMENTS REFLECTING EVENTS THAT NEVER HAPPENED AND ASKING HIS CLIENT TO FORGE HIS DECEASED WIFE'S NAME TO THEM.

In re Belding, 356 S.C. 319, 589 S.E.2d 197 (2003) (per curiam)

In re Nolan, 268 A.D.2d 164, 706 N.Y.S.2d 704 (2000) (per curiam)

In re Disney, 922 S.W.2d 15 (Mo. banc 1996)

Rule 4-8.4(c)

Rule 4-8.4(d)

POINTS RELIED ON

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE VIOLATED RULE 4-1.2(d) IN THAT HE ASKED HIS CLIENT TO SIGN HIS OWN AND HIS DECEASED WIFE'S NAMES TO BACKDATED CORPORATE RECORDS.

In re Cupples, 952 S.W.2d 226 (Mo. banc 1997)

In re Storment, 873 S.W.2d 227 (Mo. banc 1994)

Rule 4-1.2(d)

POINTS RELIED ON

III.

THE SUPREME COURT SHOULD IMPOSE SUBSTANTIAL DISCIPLINE, EITHER DISBARMENT OR ACTUAL SUSPENSION, ON RESPONDENT BECAUSE HE ENGAGED IN INTENTIONAL CONDUCT INVOLVING DECEIT AND DISHONESTY IN THAT HE PREPARED FALSE CORPORATE RECORDS WITH THE INTENT THAT THEY BECOME PART OF THE OFFICIAL RECORDS OF THE CORPORATION AND FACILITATED THE SIGNING OF A DECEASED WOMAN'S NAME TO THEM.

In re Donaho, 98 S.W.3d 871 (Mo. banc 2003)

In re Carey & Danis, 89 S.W.3d 477 (Mo. banc 2002)

In re Kazanas, 96 S.W.3d 803 (Mo. banc 2003)

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE VIOLATED RULES 4-8.4(c)(d) IN THAT HE ENGAGED IN DISHONEST AND DECEITFUL CONDUCT THAT WAS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE BY PREPARING CORPORATE DOCUMENTS REFLECTING EVENTS THAT NEVER HAPPENED AND ASKING HIS CLIENT TO FORGE HIS DECEASED WIFE'S NAME TO THEM.

Respondent admitted that his conduct violated Rule 4-8.4(c). The panel concluded that his conduct violated Rule 4-8.4(c). Because there has been no dispute over the legal conclusion that Mr. Watkins engaged in conduct involving dishonesty, deceit, or misrepresentation, there is some risk in overlooking the seriousness of what occurred.

Mr. Watkins was presented with a legal job that was, by all testimonial accounts, all but done. The family business had been incorporated, and the wills and trusts to effectuate the estate plan drawn up by Mr. Combs had been duly executed and were in good order. True, Mrs. Bashor's unexpected death before the Bashor Cattle Company stock issued and could be placed by her in her trust, put a wrinkle in the plan, insofar as the stock would have to enter the trust through Mrs. Bashor's pour over will. The thought occurs, however, that the will answered the very purpose for which such instruments are intended – to effectuate the disposition of a deceased person's property in accordance with her intentions.

Rather than follow that course, the one anticipated and provided for by Missouri statute, court rules, and centuries of common law to effectuate the fair and orderly administration of justice, Mr. Watkins chose the dishonest way. He cannot today tell us why, but he implied to the clients that they were faced with dire tax consequences, possibly double taxation of Loarine and Leroy's estates. He told them the plan set up by Mr. Combs, which he acknowledged in his hearing testimony was a very standard, common estate plan, would have to be redone because the "paperwork" did not get finished. Based on what Respondent Watkins said at the meeting, it is only reasonable to conclude that he believed, or for some unacknowledged reason wanted the Bashors to believe, that they were doctoring the paperwork to achieve tax savings to which they would not be entitled, if the documents were left as drafted by Mr. Combs.

The legal implausibility of the dire consequences described by Mr. Watkins at the meeting aside, it was the remedy chosen by him to fix the situation that is the more troubling. Mr. Watkins advised throwing out the company's duly and timely assembled corporate minutes. In their place, Mr. Watkins presented the clients and their accountant with a set of backdated corporate documents by which, according to Mr. Watkins, they would save considerable taxes. The documents falsely reflected shareholders' meetings, assignment of financial interest, issuance of stock, and Mrs. Bashor's resignation as corporate officer, all events that never occurred.

It is tempting to overlook the dishonesty inherent in what Mr. Watkins did by instead focusing on the mitigators presented by this case – Mr. Watkins' clean

disciplinary record and, arguably, the lack of client financial harm. It is precisely the element of harm, however, that forbids allowing this conduct to pass as a fluke.

What did Mr. Watkins' spiel in early 1991 tell his clients and Mr. Sumner? What did the printing of portions of the meeting transcript in local newspapers and the reporting of what happened on local television news tell the public? Unfortunately, it reaffirmed what many, if not most, already believe: that lawyers manipulate the system and are generally not trustworthy. The harm to the profession is profound and ill afforded, regardless of the apparent lack of financial harm to the clients.

While it is true that the documents in question were never presented to a tribunal or relied on in a legal proceeding, the mens rea necessary to their production requires response from the Court. In *In re Belding*, 356 S.C. 319, 589 S.E.2d 197 (2003) (per curiam), a South Carolina lawyer was disciplined for drafting a complete set of dissolution documents for a client who wanted to use them to "shock" his wife as part of their "Gestalt" therapy. The documents were never filed anywhere, but created a great deal of angst in the wife when she discovered them. The lawyer's explanation that he never intended for the documents to be presented to a court, and lacked the criminal intent to commit forgery (a local judge's name was forged on the documents), did not exonerate him. The court noted that the lawyer had gone to great lengths to make the documents appear authentic and used the name of a real judge. Although Respondent Watkins did not go so far as to ask Mr. Bashor to sign a judge's name to the documents, it is submitted that asking him to affix his deceased wife's name to corporate documents created from the ether is bad enough.

The circumstance that the conduct may have been aimed at helping the clients, by creating a legal posture that would allow the stock to go into Mrs. Bashor's trust without probate, also does not excuse the misconduct. A New York lawyer was disciplined for fabricating a will and accompanying documents necessary to submit his deceased father-in-law's estate for probate. The lawyer's actions were apparently intended to help his mother-in-law. *In re Nolan,* 268 A.D.2d 164, 706 N.Y.S.2d 704 (2000) (per curiam). Mr. Nolan argued his remorse, his lack of disciplinary history, his impressive character evidence, and his lack of venal intent or harm to any client in mitigation. The court nonetheless disbarred him, noting it was a "complex forgery of a number of documents for admission to probate." 706 N.Y.S.2d at 705.

Mr. Watkins acknowledged in his hearing testimony that he manufactured the corporate records in question for the purpose of keeping the stock transfer transaction out of probate. He testified that the probate process would take time and expense, most notably his fee. The flip side to the altruistic notion of saving the client the attorney fee for taking it through probate is, of course, that lawyer's fees in probate matters are statutorily set, or at least subject to judicial review. The way Mr. Watkins chose to handle this matter avoided review of his fee by anyone other than the client. Mr. Watkins also acknowledged understanding the purpose and role of state statutes governing corporations and their records. Respondent's elaborate scheme, involving the creation of backdated documents and the forgery of Mrs. Bashor's signature, and substitution of them for properly executed corporate records, was a clear violation of the rule prohibiting

conduct prejudicial to the administration of justice, regardless of Mr. Watkin's professed good motives.

Questions concerning a lawyer's honesty go straight to the heart of whether a lawyer is fit to practice law. *In re Disney*, 922 S.W.2d 15 (Mo. banc 1996). Because we are a self-regulating profession, we must be vigilantly mindful of the public's perception of the honesty of lawyers and the trustworthiness and integrity of the legal system. See *In re Carey and Danis*, 89 S.W.3d 477, 503 (Mo. banc 2002). Mr. Watkins is guilty of the affirmative acts of creating false documents of legal import, which held the potential, if occasion for reliance on the documents ever arose, of infecting the administration of justice with false documents bearing forged signatures. Mr. Watkins is guilty of the additional act of drawing his client into this deceit by facilitating the client's forgery of his deceased wife's name to documents. Respondent Watkins' years in the profession and his high standing in his community only exacerbate the harm. Mr. Watkins' violation of Rules 4-8.4(c) and (d) is disturbing.

ARGUMENT

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE VIOLATED RULE 4-1.2(d) IN THAT HE ASKED HIS CLIENT TO SIGN HIS OWN AND HIS DECEASED WIFE'S NAMES TO BACKDATED CORPORATE RECORDS.

It is one thing for a lawyer to create a set of backdated corporate records, and it is another to ask the clients to execute them. The fact that Mr. Watkins asked Mr. Bashor to sign not only his own name, but that of his deceased wife, to the records implicates Rule 4-1.2(d), which forbids a lawyer from counseling or assisting a client to engage in conduct the lawyer knows is criminal or fraudulent. It is telling that Mr. Watkins asked his clients to sign Mrs. Bashor's name, as he apparently was not willing to do so himself.

There was some debate at the hearing about the statutory elements of fraud and whether Mr. Watkins could list them chapter and verse. This is just the sort of sophistry the Court advised lawyers to avoid dwelling on in *In re Cupples*, 952 S.W.2d 226 (Mo. banc 1997). Whether conviction could be obtained for violation of a criminal statute is not dispositive in a disciplinary case, which are proceedings in the nature of an inquiry for the protection of the public and profession. See *In re Storment*, 873 S.W.2d 227 (Mo. banc 1994) (lawyer disciplined, despite his acquittal of criminal charges arising from the same facts, for counseling his client to lie on the witness stand).

It is very clear that Mr. Watkins knew it was wrong to create backdated corporate records. It is equally clear that he knew that asking his client to sign his deceased wife's

name to the documents was wrong. He as much as admitted knowing it was wrong at the meeting itself when he told the clients that he and the other professional present, a CPA, would not “hear” was going on.

ARGUMENT

III.

THE SUPREME COURT SHOULD IMPOSE SUBSTANTIAL DISCIPLINE, EITHER DISBARMENT OR ACTUAL SUSPENSION, ON RESPONDENT BECAUSE HE ENGAGED IN INTENTIONAL CONDUCT INVOLVING DECEIT AND DISHONESTY IN THAT HE PREPARED FALSE CORPORATE RECORDS WITH THE INTENT THAT THEY BECOME PART OF THE OFFICIAL RECORDS OF THE CORPORATION AND FACILITATED THE SIGNING OF A DECEASED WOMAN'S NAME TO THEM.

Every lawyer owes a duty to the general public to maintain his personal integrity. Integrity is not an aspirational character trait that comes into play only if our actions are intended for public scrutiny. Quite the opposite, it can be argued that integrity is truly measured by what happens behind closed doors, when there is no expectation of peer review. Mr. Watkins' conduct in 1991 failed the test. True, the facts may never have come to light but for Mr. Bashor's remarriage and subsequent divorce some thirteen years down the road. But, come to light in a very public way it did, to the shame of the profession.

Mr. Watkins intentionally violated the duty he owed to the public to maintain his personal integrity, regardless of his expectation that the public would never find out. While he rightfully has his individual supporters, the publicity his conduct received in northwest Missouri injured the profession. One newspaper article quotes extensively

from the transcript of the meeting, including such remarks by Mr. Watkins as "Now, is there anybody around that can sign Lorraine's [sp] signature? Can you forge her signature close enough?" Mr. Watkins is himself quoted in one newspaper article as acknowledging the incident had produced "significant adverse publicity." **App. 245**.

Disciplinary counsel recommended disbarment to the panel, citing the applicability of ABA Standard Rule 5.11, which in pertinent part reads as follow:

> Disbarment is generally appropriate when (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

ABA Standards for Imposing Lawyer Sanctions (1991 ed.). Respondent's counsel counterargued at hearing that Mr. Watkins' conduct did not involve "commission of a criminal act." As previously argued under Point I of this brief, disciplinary counsel believes the Standard applies regardless of whether the evidence adduced at hearing would have convicted Respondent of a crime. Respondent acted intentionally in producing backdated corporate records and asking his client to sign his deceased wife's name to them – dishonest and deceitful conduct that seriously adversely reflects on a lawyer's fitness to practice.

Suspension may also be an appropriate sanction, due to the strength of the mitigating factors present in the case. If suspension is appropriate, however, actual and not stayed suspension is urged. The baseline sanction repeatedly recognized by this Court for dishonest or deceitful conduct is actual suspension. See *In re Donaho*, 98

S.W.3d 871, 874 (Mo. banc 2003), *In re Carey & Danis*, 89 S.W.3d 477, 502 (Mo. banc 2002), *In re Cupples*, 979 S.W.2d 932, 936-937 (Mo. banc 1998), *In re Disney*, 922 S.W.2d 13, 15 (Mo. banc 1996). Disciplinary counsel believes actual, and not stayed suspension subject to a period of probation, is appropriate due to the extent of harm to the profession attendant on the publicity this case received.

Finally, although the Court has said it many times over the decades, it bears repeating that disciplinary cases are not proceedings to punish the individual lawyer. *In re Kazanas*, 96 S.W.3d 803, 807 (Mo. banc 2003), *In re Westfall*, 808 S.W.2d 829, 836 (Mo. banc 1991), *In re Staab*, 719 S.W.2d 780, 784 (Mo. banc 1986), *In re Bear*, 578 S.W.2d 928, 937 (Mo. banc 1979), *In re Sympson*, 322 S.W.2d 808, 812 (Mo. banc 1959). The sympathy we reasonably feel for the adverse consequences Mr. Watkins has endured as a result of the illumination of the 1991 meeting has no place in sanction analysis. There has been no "other penalty or sanction" imposed, which is the mitigating factor recognized in the Standards. Standard Rule 9.32(k). According to Mr. Watkins, he resigned his positions with, i.e., was not discharged from, the Shughart Thomson law firm and the hospital. The economic consequences, therefore, argued at hearing in mitigation of sanction should not be part of the equation. The record discloses no civil or criminal consequences to what happened.

The record reveals an individual who enjoys a life blessed by long-standing generational presence in the northwest Missouri legal community with all the advantages that follow, a supportive family and friends, and, one reasonably infers, more than three decades of lucrative and rewarding law practice. The Court should not, under the

circumstances of the publicity this case has generated, hesitate to discipline Respondent for what came to be very public violation of the Rules of Professional Conduct.

CONCLUSION

Respondent Watkins violated the Rules against dishonest and deceitful conduct and conduct prejudicial to the administration of justice (Rule 4-8.4(c)(d)) and against counseling and assisting a client to engage in criminal or fraudulent conduct (Rule 4-1.2(d)). Respondent intentionally violated his duty to maintain personal integrity in a way that, unfortunately, became very public. He should be sanctioned by substantial discipline: actual suspension or disbarment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December, 2005, two copies of Informant's Brief and a diskette containing the brief in Microsoft Word format have been sent via First Class mail to:

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_____
Sharon K. Weedin

CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;

2. Complies with the limitations contained in Rule 84.06(b);

3. Contains 5,847 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and

4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

_____
Sharon K. Weedin

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